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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

THE STATE OF WYOMING,

Petitioner,

vs.

SANDRA HOUGHTON,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of Wyoming

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the bright-line of *Acevedo* v. *California* permitting containers to be opened during warrantless automobile searches have limits based on the ownership of the containers?

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society.

The automobile's mobility and pervasiveness makes it an ideal tool for transporting contraband, particularly illegal drugs. The ability of police to conduct warrantless searches of automobiles whenever they possess probable cause that the vehicle

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1. Rule 37.6 Statement: This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

Both parties have given written consent to the filing of this brief.

contains contraband is thus an essential tool for combatting such crime. The Wyoming Supreme Court's "notice test" for opening closed containers suspected of carrying contraband needlessly complicates automobile searches while providing little protection for any legitimate expectation of privacy. The threat posed by this decision to this very important law enforcement mechanism is contrary to the interests CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

On July 23, 1995, in the early morning, a "Wyoming Highway Patrol Officer stopped an automobile for speeding and a faulty break light." *Houghton* v. *State*, 956 P. 2d 363, 365 (Wyo. 1998). The vehicle contained three occupants: the driver, David Young; his girlfriend; and the defendant. *Ibid.* The officer, who was soon joined by two other officers, started questioning Young. During the questioning, the officer noticed a syringe in Young's shirt pocket. The officer then went to his patrol car in order to get gloves. Upon his returning to Young's vehicle, he ordered Young out of the car and to place the syringe on the hood. When asked what the syringe was for, Young replied that it was for personal use. *Ibid.*

The passengers were then ordered out of the vehicle and asked for identification. *Ibid.* Defendant identified herself as Sandra Jones and claimed that she had no identification. The passengers were then patted down, which produced no weapons or drugs. The officer then searched the automobile for drugs. *Ibid.*

The officer discovered "a closed 'cloth lady's purse' " while searching behind the area where the two female passengers sat. *Ibid.* He opened the purse and took out a wallet. Inside the wallet he discovered defendant's driver's license which identified her as Sandra Houghton. Defendant then acknowledged that the purse was hers. The officer then continued the search, finding "a brown 'wallet bag' containing drug parapher-

nalia, a syringe containing an estimated 60 cc's of liquid, a black wallet containing drug paraphernalia, a vial, and a syringe with approximately 10 cc's of liquid." *Ibid.* A field test of the liquid from the syringe in the brown bag tested positive for methamphetamine. Defendant was arrested, while Young and his girlfriend were released. *Ibid.*

The trial court denied defendant's suppression motion, relying on *California* v. *Acevedo*, 500 U. S. 565 (1991). *Houghton*, 956 P. 2d, at 365. A jury convicted defendant of one count of felony possession of a controlled substance. She was sentenced to two to three years in prison. *Ibid.* The Wyoming Supreme Court reversed, holding that the search violated the Fourth Amendment because the officer knew or should have known that the purse did not belong to Young. *Id.*, at 372.

SUMMARY OF ARGUMENT

The decision below failed to appreciate the special status of the automobile under the Fourth Amendment. Beginning with *Carroll* v. *United States*, this Court has treated automobiles differently in its Fourth Amendment cases due to their mobility, the diminished expectations of privacy surrounding automobiles, and the inherent dangers of automobile stops.

The Wyoming Supreme Court's reliance on *Ybarra* v. *Illinois* is a product of its failure to appreciate this key distinction. Occupants of an automobile are more closely associated with the premises being searched and have less of an expectation of privacy than the tavern patrons in *Ybarra*. As both automobiles and their passengers are treated differently under the Fourth Amendment, *Ybarra* is inapplicable.

The automobile exception to the warrant requirement is a creature of Fourth Amendment policy. In addition to the mobility and diminished privacy of the automobile, another consideration should influence this Court's analysis of automobile searches. Because the automobile exception is limited to searches for contraband, and since most contraband searches are

for illegal drugs, most searches under this exception will be for drugs. Therefore, the dangers often associated with such searches should inform this Court's analysis of the automobile exception where relevant.

The present case is best served by the formulation of a single, clear-cut rule by this Court. Although this Court has shied away from bright lines upon occasion, it has done so where the rule would be impractical or provide little benefit. This Court can and has established bright-lines where there is a need for clear authority in a carefully defined aspect of Fourth Amendment law. This Court's cases demonstrate that automotive searches are ideally suited to such rules.

The "notice test" invoked by the Wyoming Supreme Court fails to satisfy this requirement. Tying the authority to open a container to the apparent ownership of it needlessly complicates automobile searches, while providing a potential windfall for perpetrators. Any attempt to deal with concealed contraband under this test will either create an exception that will swallow the test or create an exceptionally complicated rule.

The better rule is derived from *Acevedo*. Allowing all containers to be opened, regardless of their ownership, is clear, simple, and consistent with the spirit of *Acevedo*. So long as a container is capable of holding the suspected contraband, officers should be able to open it during an automobile search.

ARGUMENT

I. The decision below did not account for the exigencies of automobile searches.

The automobile occupies an important niche in Fourth Amendment law. Driving or riding in an automobile significantly changes an individual's legitimate expectation of privacy. The Fourth Amendment does not, of course, disappear inside the car. See *Coolidge* v. *New Hampshire*, 403 U. S. 443, 461-462 (1971) (plurality). It is no less true, however, that one's

expectation of privacy diminishes upon entering an automobile. The reasons for treating automobile searches differently form the foundation for any analysis of a search or seizure involving an automobile. The Wyoming Supreme Court's failure to appreciate this difference taints its analysis.

The first case from this Court to uphold a warrantless search of an automobile, *Carroll* v. *United States*, 267 U. S. 132 (1925), centered on the difficulty of searching an automobile or other vehicles under the traditional warrant process.

> "[T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.*, at 153.

As the automobile exception was expanded and refined, another justification developed, namely, the lesser expectation of privacy associated with automobiles.

> "The Court has recognized that the physical characteristics of an automobile and its use result in a lessened expectation of privacy therein:
>
> " 'One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.' " *New York* v. *Class*, 475 U. S. 106, 112-113 (1986) (quoting *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) (plurality)).

The diminished sense of privacy inherent in automobiles is reinforced by the "pervasive and continuing governmental regulation" of them. See *South Dakota* v. *Opperman*, 428 U. S. 364, 368 (1976).

The limited privacy of the automobile has consequences beyond warrantless searches. In *United States* v. *Knotts*, 460 U. S. 276 (1983), federal agents placed a beeper inside a container of chloroform to be sold to an individual suspected of using stolen chemicals to manufacture illicit drugs. See *id.*, at 277-278. Relying on a signal from the beeper, agents traced the chloroform on its journey to its final resting point, a cabin in Wisconsin. *Id.*, at 278. Using the location of the chloroform and additional information obtained through visual surveillance, officers obtained and executed a search warrant. *Id.*, at 279. The Eighth Circuit Court of Appeals reversed the conviction, holding that the monitoring of the beeper violated defendant's reasonable expectation of privacy, suppressing all information found after the cabin was located as being the fruit of the illegal monitoring. *Ibid.* This Court noted that it had "commented more than once on the diminished expectation of privacy in an automobile." *Id.*, at 281. The situation in *Knotts* was no different since "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *Ibid.* The surveillance did not constitute a search or seizure, and therefore could not violate the Fourth Amendment. See *id.*, at 285.

The exigencies surrounding the automobile extend beyond the Warrant Clause as well. In *Maryland* v. *Wilson*, 519 U. S. 408, 410 (1997), this Court extended the rule of *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) (*per curiam*) (ordering the driver to exit the vehicle during a lawful stop) to automobile passengers. Since traffic stops pose a real threat of danger to officers, see *Wilson*, 519 U. S., at 413, the balance of interest tipped in favor of the reasonableness of ordering passengers out of vehicles during traffic stops. Even though the passenger did nothing to justify the initial stop, the "danger to an officer from

a traffic stop," *id.*, at 414, from the presence of passengers, justified this additional intrusion. *Id.*, at 415.

Wilson drew from the rule of *Michigan* v. *Summers*, 452 U. S. 692 (1981), which allowed police officers to detain occupants during the execution of a search warrant for contraband on a residence. See *id.*, at 704-705. While *Summers* gave officers substantial authority, the grant of authority to detain was carefully controlled. The existence of a warrant was "[o]f prime importance" in supporting the constitutionality of the detention. See *id.*, at 701. Furthermore, *Summers* was applied only to searches for illegal drugs because of the special risk such searches carried. "[T]he execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence." *Id.*, at 702. Allowing officers to control the search through temporary detention minimizes this risk. *Id.*, at 702-703.

Wilson extended *Summers*' limited rule by recognizing the automobile's special place in the Fourth Amendment. Instead of a magistrate's finding of probable cause of the existence of contraband, the *Wilson* detention can be supported by a simple warrantless traffic stop. See *Wilson*, *supra*, 519 U. S., at 415. The lack of a warrant is inevitable when a traveling automobile is involved; it is impractical to obtain a warrant on a moving vehicle. See *Carroll*, *supra*, 267 U. S., at 153. As noted earlier, the inherent danger of automobile stops played a major role in the *Wilson* decision, thus making the automotive stop analogous to executing a search warrant for narcotics. See 519 U. S., at 414 (analogizing *Summers*). Finally, the realities of automobile stops lessens the intrusiveness of the detention. Because "as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle," *id.*, at 413-414, the extra intrusion of ordering them out of the car is minimal. *Id.*, at 415. Even though the passengers did not commit the "minor vehicular offense," which justified the stop and detention, the realities of the possible dangers at a traffic stop help justify the extra intrusion. See *id.*, at 413-414.

Summers created a special exemption for certain search warrants. Although it took no formal position on whether its rule applied to ordinary searches for evidence, see 452 U. S., at 705, n. 20, a careful reading of that footnote casts substantial doubt over any attempt to expand *Summers* beyond warrants for contraband. Footnote 20's disclaimer concerning evidentiary searches is followed by a citation to Justice Steven's dissent in *Zurcher* v. *Stanford Daily*, 436 U. S. 547 (1978), where he stated "the persons who possess evidence that may help to identify an offender, or explain an aspect of a criminal transaction, far outnumber those who have custody of weapons or plunder," and that "[c]ountless law-abiding citizens . . . may have documents in their possession that relate to an ongoing criminal investigation." *Id.*, at 579. If accepted, this view casts grave doubt over extending *Summers* beyond contraband. See 2 W. LaFave, Search and Seizure § 4.9(e), pp. 651-652, n. 123 (3d ed. 1996). By contrast *Wilson* applies to *all* passengers in *all* validly stopped automobiles, vividly illustrating the differences between automobile searches and most other searches. As this Court has noted, "for the purposes of the Fourth Amendment there is a *constitutional difference* between houses and cars." *Chambers* v. *Maroney*, 399 U. S. 42, 52 (1970) (emphasis added).

The Wyoming Supreme Court's decision did not appreciate this essential distinction. Relying on the statement in *United States* v. *Ross*, 456 U. S. 798, 823 (1982), equating the scope of a warrantless automobile search with that of a search pursuant to a warrant,[2] see *Houghton* v. *State*, 956 P. 2d 363, 366 (Wyo. 1998), the Wyoming high court analyzes the search in the present case as if it were the product of an ordinary search warrant. See *id.*, at 367.

This problem with approach is revealed by its reliance on *Ybarra* v. *Illinois*, 444 U. S. 85 (1979). *Ybarra* struck down a

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2. "The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." *Ibid.*

patdown search of a customer who was in a bar during the execution of a search warrant for drugs against the premises of the tavern and the person of a bartender. See *id.*, at 88, 96. In reaching that conclusion, this Court noted that probable cause must extend to each individual being searched or seized pursuant to the warrant, as the mere coincidence of visiting a place during the execution of a search warrant against it did not justify an invasion of the visitor's privacy. See *id.*, at 91. The Wyoming Supreme Court extended this "persons not places" reasoning, *ibid.*, to protect containers in automobiles such as the defendant's purse. See *Houghton*, *supra*, 956 P. 2d, at 367-369.

This conclusion fails to place *Ybarra* in its proper context. *Ybarra* protected visitors to a public place, and is therefore distinguishable from *Summers*, which dealt with a private dwelling. See 2 LaFave, *supra*, at 650-651. *Wilson* demonstrates that the passengers of an automobile are analogous to the occupants in *Summers* under the Fourth Amendment. One does not normally share an automobile with complete strangers, as one often does with a public place like a bar. Furthermore, the occupants of a vehicle have a diminished privacy expectation compared to *Ybarra*'s bar patrons. The difference is more pronounced when comparing the containers in the present case to the *Ybarra* patrons. " 'The search of an automobile is far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building.' " *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) (plurality) (quoting *Almeida-Sanchez* v. *United States*, 413 U. S. 266, 279 (1973) (Powell, J., concurring)). *Ybarra*'s protection of the stranger does not apply to the context of the automobile search.

The fact that the Wyoming Supreme Court invoked *Ross*, an automobile case, to support its use of *Ybarra* does not bring *Ybarra* into the context of automobile searches. In *Ross*, officers stopped defendant's car after an informant had provided them with probable cause that Ross was dealing drugs from his car. See 456 U. S., at 800-801. A search of the passenger compartment found a bullet on the front seat, and a gun in the glove compartment. *Id.*, at 801. The police then searched

Ross' trunk where they found a closed paper bag which they opened, finding glassine bags of what proved to be heroin. *Ibid.* A more thorough search at the police station found in the trunk a zippered leather pouch containing $3,200 in cash. *Ibid.* Citing *Arkansas* v. *Sanders*, 442 U. S. 753 (1979), the Ninth Circuit Court of Appeals struck down the opening of the leather pouch because Ross had a reasonable expectation of privacy in its contents. See *Ross*, 456 U. S., at 801-802.

Sanders was based on *United States* v. *Chadwick*, 433 U. S. 1 (1977). See 442 U. S., at 762-763. In *Chadwick*, federal agents had probable cause to believe that a 200-pound, double-locked footlocker contained marijuana. 433 U. S., at 3-5. The agents tracked the locker as defendants removed it from a train and carried it through the station to a waiting automobile. *Id.*, at 3-4. As defendants lifted the locker to the car, the agents arrested them, seized the locker, and opened it one and one-half hours later. See *id.*, at 4. The United States did not claim that the trunk's brief contact with the car made *Carroll* applicable. It instead analogized the movable luggage to an automobile. *Id.*, at 12. The *Chadwick* Court rejected this argument, finding that a person expects more privacy in his luggage and personal effects than in his car. *Id.*, at 13. *Sanders* extended *Chadwick* to a suitcase stored in the trunk of a vehicle. See *Sanders*, *supra*, 442 U. S., at 762-765.

These cases provided a confusing, ill-considered standard that impeded effective law enforcement while doing little to protect privacy, and eventually would be abandoned for automobiles. See *post*, at 11. The *Ross* Court avoided the *Chadwick-Sanders* rule by distinguishing between it and the original automobile search case, *Carroll*. See 456 U. S., at 817. When it equated the scope of the automobile search with that of a warrant-based search, the *Ross* Court was distinguishing the *Chadwick-Sanders* rule so that officers could open containers found during the search under the authority of *Carroll*.

> "The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which

> the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab." *Ross*, *supra*, 456 U. S., at 824.

This is the only limit that *Ross* adds to automobile searches. *Ross* did not import all of the law of search warrants into the automobile search. Where appropriate to the context of the automobile search, principles could be borrowed from this Court's interpretation of the Warrant Clause. As *California* v. *Acevedo*, 500 U. S. 565 (1991) demonstrates, where the automobile demanded different treatment, automobile searches would still be treated differently.

Acevedo's car was stopped on probable cause that it contained drugs. See *Id.*, at 567. A search of the trunk found a paper bag which, when opened without a warrant, was found to contain marijuana. *Ibid.* A California Court of Appeal suppressed the search of the bag under *Chadwick* while noting tension between that decision and *Ross*. *Id.*, at 568. This Court found that the *Chadwick-Sanders* line provided little protection of privacy, see *id.*, at 575-576, and established a confusing standard. See *id.*, at 576-577. The *Chadwick-Sanders* line was abandoned for automobile searches because automobiles were different under the Fourth Amendment.

> "Thus, this Court in *Ross* took the critical step of saying that closed containers in cars could be searched without a warrant *because of their presence within the automobile*. Despite the protection that *Sanders* purported to extend to closed containers, the privacy interest in those closed

containers *yielded to the broad scope of an automobile search.*" *Id.*, at 572 (emphasis added).

Attempts to apply stricter, non-automobile standards to automobile searches are usually fruitless. In *Acevedo*, the dissent supported its argument that *Chadwick-Sanders* had not impeded law enforcement by noting that since *Ross*, this Court had decided 27 cases in favor of the government. See *id.*, at 600 (Stevens, J., dissenting). The *Acevedo* majority dismissed this with a forceful argument against applying alien concepts to automotive searches.

> "Most important, with the exception of *United States* v. *Johns*, 469 U. S. 478 (1985) and *Texas* v. *Brown*, 460 U. S. 730 (1983), the Fourth Amendment cases cited by the dissent do not concern automobiles or the automobile exception. From *Carroll* and *Ross*, this Court has explained that *automobile searches differ from other searches*. The dissent fails to acknowledge this basic principle and so misconstrues and misapplies our Fourth Amendment case law." *Id.*, at 578 (emphasis added).

Accepting the Wyoming Supreme Court's rule would amount to jamming *Ybarra*'s square peg into the round hole of automobile searches.

Ybarra's reliance on *United States* v. *Di Re*, 332 U. S. 581 (1948), see 444 U. S., at 94-95, does not justify applying *Ybarra* to automobile searches. In *Di Re* an informer told an Office of the Price Administration investigator that he was going to purchase counterfeit gasoline ration coupons from a person named Buttitta in a certain place in Buffalo, New York. The investigator and a Buffalo police detective trailed Buttitta's car until it parked at the appointed place. They went to the car and found the informer in the rear seat holding two coupons which were later found to be counterfeit. The informant stated that he obtained the coupons from Buttitta who was sitting in front along with Di Re. All three were taken into custody, frisked for weapons, and taken to the station. At the station, two searches of Di Re turned up numerous counterfeit gas and oil coupons.

See 332 U. S., at 583. This Court struck down the search, finding that probable cause to search a car does not support the search of an occupant of that car absent probable cause to arrest him. See *id.*, at 586-587.

Di Re was invoked by the *Ybarra* Court to reject an argument that had little to do with the present case. Illinois had argued that *Terry* v. *Ohio*, 392 U. S. 1 (1968) should be extended to the execution of drug warrants against " 'compact' premises." See *Ybarra, supra*, 444 U. S., at 94. *Di Re* itself does not govern the present case because it only prevented searches of the occupants themselves; *Di Re* did not address searches of containers. This Court was only "not convinced that a person, by mere presence in a suspected car, loses immunities from search of his *person* to which he would otherwise be entitled." *Di Re, supra*, 332 U. S., at 587 (emphasis added). Both *Ross* and *Acevedo* demonstrate that as far as containers are concerned, their presence in an automobile diminishes the expectation of privacy in them. *Di Re* has been criticized for allowing occupants of an automobile to " 'take the narcotics out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched.' " 3 W. LaFave, Search and Seizure § 7.2(e), p. 508 (3d ed. 1996) (quoting Model Code of Pre-Arraignment Procedure 552 (1975)). It should not be allowed to create a new windfall with respect to containers in vehicles.

The legality of the search in the present case can only be decided on its own terms, as an automobile search. The Wyoming Supreme Court's reliance on *Ybarra* was misplaced, thus confusing the analysis and leading it to reach the wrong result.

II. The rule of *California* v. *Acevedo* should not be complicated by the impractical "notice test."

A. The Policy Problem.

The automobile exception to the warrant requirement based upon *Carroll* v. *United States*, 267 U. S. 132 (1925) and its successors is a creature of Fourth Amendment policy. The automobile exception and its subsequent application by the Court have involved a careful analysis of the competing interests of the individual's privacy and the public interest in effective law enforcement. See, *e.g.*, *id.*, at 153-154; *Cady* v. *Dombrowski*, 413 U. S. 433, 441-442 (1973); *South Dakota* v. *Opperman*, 428 U. S. 364, 367-369 (1976); *California* v. *Carney*, 471 U. S. 386, 394 (1985); *California* v. *Acevedo*, 500 U. S. 565, 576-577 (1991).

The automobile exception to the warrant requirement is justified on the policy grounds that it is impractical to obtain a warrant to search something as mobile as an automobile, and that cars carry a diminished expectation of privacy. See *Carney*, *supra*, 471 U. S., at 391; *supra*, at 5-6. As noted in part I, *supra*, these are not the only reasons for treating automobiles differently under the Fourth Amendment. See *supra*, at 6-8. *Amicus* submits that an automobile search should be analyzed under all of the relevant policy reasons that make automobiles special under the Fourth Amendment. Thus, an additional aspect of automobile searches, the risks associated with searches for drugs, deserves particular attention when considering what standards should govern the conduct of automobile searches.

While important for traffic stops generally, the need to think clearly and control the situation is even more important for a traffic stop that escalates to a warrantless search under the automobile exception. So far this Court has only allowed these types of searches when there is probable cause that the vehicle contains contraband. See, *e.g.*, *Pennsylvania* v. *Labron*, 518

U. S. 938, 940 (1996) (*per curiam*).[3] The extra dangers associated with the typical contraband search reinforces the officer's need for clear instructions from this Court.

Although the term "contraband" covers any goods which are deemed "unlawful to produce or possess," see Black's Law Dictionary 322 (6th ed. 1990), automobile searches will most often involve illegal drugs. The threat posed to society by drugs is considerable. "Possession, use, and distribution of illegal drugs represent 'one of the greatest problems affecting the health and welfare of our population.' " *Harmelin* v. *Michigan*, 501 U. S. 957, 1002 (1991) (Kennedy, J., concurring) (quoting *Treasury Employees* v. *Von Raab*, 489 U. S. 656, 668 (1989)). Given the threat posed from the pervasive scourge of illegal drugs, much effort is expended by law enforcement to combat this threat. Preliminary statistics show that drug offenses constituted 36.4% of all felony convictions in U. S. District Courts in 1994 and 22.9% of all state felony convictions in 1994. See U. S. Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics 1996, pp. 440, 471 (1997). A problem this pervasive stands to be a very common target of automobile searches. Thus the bulk of this Court's recent automobile search cases have involved drug searches or seizures. See, *e.g.*, *Labron*, 518 U. S., at 939 (*per curiam*); *Acevedo*, 500 U. S., at 567; *United States* v. *Johns*, 469 U. S. 478, 480-481 (1985); *Carney*, 471 U. S., at 388; *United States* v. *Ross*, 456 U. S. 798, 800-801 (1982); *Arkansas* v. *Sanders*, 442 U. S. 753, 755 (1979); *Opperman*, 428 U. S., at 365-366.

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3. The contraband requirement started in *Carroll*, which addressed a prohibition-era search for alcohol. See 267 U. S., at 153-154. Although there are sound reasons for having particular concerns about contraband, the impracticality of obtaining a warrant would be similar for other items in an automobile such as a murder weapon. Since this case involves a search for contraband it is unnecessary to determine whether the automobile exception applies to searches supported by probable cause that other evidence of a crime is in the vehicle. However, *Carroll*'s contraband limitation should not be controlling if such a case ever comes before this Court. See 3 W. LaFave, Search and Seizure § 7.2(a), pp. 459-460 (3d ed. 1996).

While some searches will turn up items associated with more mundane crimes, see *Texas* v. *White*, 423 U. S. 67, 67-68 (1975) (*per curiam*) (fraudulent checks), other dangerous items can be found during automobile searches. See, *e.g.*, *Chambers* v. *Maroney*, 399 U. S. 42, 44 (1970) (instruments and fruits of armed robbery, namely guns and money).

Like automobiles, drugs do sometimes change the calculation of what is reasonable under the Fourth Amendment. In upholding the authority of policy to detain an individual leaving a house during the execution of a search warrant for drugs, this Court said:

> "Although no special danger is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Michigan* v. *Summers*, 452 U. S. 692, 702-703 (1981).

The need for clarity is made even stronger by a real threat of lost evidence. The mobility that justifies suspending the warrant requirement greatly aids in the destruction of successfully hidden contraband; if an officer fails to open a container out of fear derived from an unclear understanding of the Fourth Amendment law,[4] then the lucky perpetrators can easily dispose of the potentially incriminating contraband far away from the suspecting police. "In short, '[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.' "

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4. Since automobile searches are warrantless, "police officers of course lose the protection that a warrant would provide to them in an action for damages brought by an individual claiming that the search was unconstitutional." *United States* v. *Ross*, 456 U. S. 798, 823, n. 32 (1982). Fear of litigation can thus make the threat of deterred searches all too real.

New York v. *Belton*, 453 U. S. 454, 458 (1981) (quoting *Dunaway* v. *New York*, 442 U. S. 200, 213-214 (1979)).

B. The Solution.

1. Drawing the proper line.

The Fourth Amendment is a particularly fruitful source of interpretive problems. Any legal standard that turns on a concept as liquid as "reasonableness," see, *e.g.*, *Terry* v. *Ohio*, 392 U. S. 1, 19 (1968); *Whren* v. *United States*, 517 U. S. 806, 817 (1996), is bound to create a complex body of rules. Since the Fourth Amendment regulates much police conduct, see *Belton*, *supra*, 453 U. S., at 458, its scope is necessarily broad, multiplying its many judicial interpretations. Implementing such an important complex legal standard will never be easy.

One of the more difficult problems posed by the Fourth Amendment's interpretative difficulties is determining the proper level of specificity for Fourth Amendment rules. The reasonableness standard at the heart of every Fourth Amendment case often argues for a case-by-case approach so that the factual peculiarities of each case may be appreciated. See, *e.g.*, *Ohio* v. *Robinette*, 519 U. S. 33, 39 (1996); *Florida* v. *Royer*, 460 U. S. 491, 506-507 (1983) (plurality). This Court has, however, also understood that some cases call for clear rules that will govern a variety of situations.

> "Respondent argues that, because we have generally eschewed bright-line rules in the Fourth Amendment context, see, *e.g.*, *Ohio* v. *Robinette*, [519 U. S. 33 (1996)], we should not here conclude that passengers may constitutionally be ordered out of lawfully stopped vehicles. But, that we typically avoid *per se* rules concerning searches and seizures does not mean that we have always done so; [*Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977)] itself drew a bright line, and we believe the principles that underlay that decision apply to passengers as well." *Maryland* v. *Wilson*, 519 U. S. 408, 413, n. 1 (1997).

This dilemma is not solved by throwing the labels "case-by-case approach" or "bright-line rules" at particular Fourth Amendment issues, but by a careful analysis of what level of specificity will best solve the Fourth Amendment problem brought before the Court. This Court will promulgate clear rules to govern Fourth Amendment question when there is a need to simplify.

> "Yet, as one commentator has pointed out, the protection of the Fourth and Fourteenth Amendments 'can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.' LaFave, 'Case-By-Case Adjudication' versus 'Standardized Procedures': The Robinson Dilemma, 1974 S. Ct. Rev. 127, 142. This is because
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> > " 'Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be "literally impossible of application by the officer in the field." ' " *Id.* at 141." *Belton, supra*, 453 U. S., at 458.

The proposed rule rejected by the *Robinette* Court was the near-antithesis of a proper Fourth Amendment rule. *Robinette* dealt with a consent search conducted after a valid traffic stop. See 519 U. S., at 35-36. The Ohio Supreme Court struck down the search by establishing

> "a bright-line prerequisite for consensual interrogation under these circumstances:

> " 'The right, guaranteed by the federal and Ohio Constitutions, to be secure in one's person and property requires that citizens stopped for traffic offenses be clearly informed by the detaining officer when they are free to go after a valid detention, before an officer attempts to engage in a consensual interrogation. Any attempt at consensual interrogation must be preceded by the phrase "At this time you legally are free to go" or by words of similar import.' " *Id.* at 36.

The impracticality of this standard virtually forced its rejection. This Court had earlier rejected the argument that consent to search was invalid unless the defendant understood his right to decline consent. *Schneckloth* v. *Bustamonte*, 412 U. S. 218, 227 (1973). *Robinette* understood the practicality of that decision. "And just as it 'would be thoroughly impractical to impose on the normal consent search the detailed requirement of an effective warning,' *id.*, at 231, so too would it be unrealistic to police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary." *Robinette*, *supra*, 519 U. S., at 39-40 (citation omitted) (quoting *Schneckloth*, 412 U. S., at 231).

The rule struck down by *Robinette* did not make an officer's task simpler. Since it was only a prerequisite to a valid consent, satisfying the proposed rule would not end the inquiry. Instead, a court would still have to determine the voluntariness of the consent " 'from all the circumstances . . . .' " *Id.*, at 40 (quoting *Schneckloth*, 412 U. S., at 248-249). This rule thus only served to further complicate the officer's job, contrary to the purpose behind such rules. Since officers will not ask for consent in a uniform manner, and citizens will not respond with any greater consistency, a fact-specific inquiry is the only reasonable solution.

Richards v. *Wisconsin*, 520 U. S. 385 (1997) provides another example of an inappropriate Fourth Amendment rule. The Wisconsin Supreme Court's decision to suspend the "knock-and-announce" rule for the execution of all drug-related

search warrants created an exception that was both too broad and too difficult to contain. See *id.*, at 392-394. This was due in part to the control the police had over the execution of a search warrant. Officers could at times substantially reduce the physical risk or the risk of the destruction of evidence through proper timing or investigation. See *id.*, at 393. This differs from automobile searches, in which police have little control over when and where the search takes place, and where destruction of evidence poses a constant threat. The *Richards* Court's second reason for dismissing the rule, that "the reasons for creating an exception in one category can, relatively easily, be applied to others," see *id.*, at 393-394, does not apply to the present case. Automobiles are clearly treated distinctly under the Fourth Amendment. See Part I, *supra*. *Acevedo* demonstrates that containers within them are also to be treated specially. See *supra*, at 11-12. This different treatment has not and will not bleed into other similar categories. Under the Fourth Amendment, the vehicle stands alone. The rule of *Richards* is thus inapplicable to the present case.

Automobile stops and searches provide several examples of appropriate Fourth Amendment rulemaking. Two of these examples, *Belton*, *supra*, and *Wilson*, *supra*, have already been discussed in this brief. *Belton* dealt with a search incident to a lawful custodial arrest of an occupant of a vehicle. 453 U. S., at 455. Searches incident to custodial arrests were particularly important because of the need to find any weapons the arrestee may have access to, and to prevent the destruction of evidence. *Id.*, at 457. It was therefore important to this Court to formulate a "workable rule" to govern this situation. See *id.*, at 460. From this followed the rule that all containers in the passenger compartment may be searched pursuant to a valid arrest. *Ibid.*

As noted earlier, *Wilson* was based on the inherent danger of vehicle stops. See *supra*, at 6-7. The *Wilson* Court thus understood that officers must be allowed to control the situation. See 519 U. S., at 414. Extending the bright line of *Mimms*, *supra*, see *id.*, at 413, n. 1, allowed officers to preserve that control by freeing them from having to make unnecessarily

complex legal calculations concerning their control over the passengers.

A particularly important rule for the present case was announced in *California* v. *Acevedo*, 500 U. S. 565 (1991). *Acevedo* abandoned the *Chadwick-Sanders* line of cases for a rule generally allowing containers to be searched inside a car under the automobile exception to the Warrant Clause. See *supra*, at 11. A major problem with the *Chadwick-Sanders* rule was its conflict with the *Carroll* doctrine governing automobile searches. See *Acevedo*, 500 U. S., at 576. This "discrepancy between the two rules has led to confusion for law enforcement officers." *Ibid.* *Acevedo* recognized "the virtue of providing ' " 'clear and unequivocal' guidelines . . . . " ' " *Id.*, at 577 (quoting *Minnick* v. *Mississippi*, 498 U. S. 146, 151 (1990) (quoting *Arizona* v. *Roberson*, 486 U. S. 675, 682 (1988))). When confronted by the confusion wrought by *Chadwick* and *Sanders*, the *Acevedo* Court "conclude[d] that it is better to adopt one clear cut rule to govern automobile searches . . . ." *Id.*, at 579. *Carroll* searches of containers within automobiles thus are already governed by a bright-line rule. Any rule that governs the present case should preserve *Acevedo*'s essential clarity.

2. The Rule.

Before finding the right rule to govern the present case, it is important to understand why the Wyoming Supreme Court's standard is inappropriate. It adopted a notice test which prohibits officers from searching any containers they know or reasonably should know "belong to someone not contemplated in the warrant or amenable to search on the basis of probable cause." *Houghton* v. *State*, 956 P. 2d 363, 370 (Wyo. 1998). This test is designed to govern the execution of search warrants of premises, where it is one of several competing standards. See *id.*, at 367; 2 W. LaFave, Search and Seizure § 4.10(b), pp. 661-666 (3d ed. 1996).

The notice test's first fault lies with its origin in *Ybarra* v. *Illinois*, 444 U. S. 85 (1979). Because *Ybarra* only partially limited the government's ability to search visitors to a premises upon which a warrant is being executed, some test had to determine when a visitor's belongings could be searched. See *Houghton*, *supra*, 956 P. 2d, at 367. The notice test attempts to solve this problem.

As noted earlier, *Ybarra* does not govern automobile searches under the *Carroll* exception because the expectation of privacy of an occupant of a vehicle is less than that of *Ybarra*'s visitor to a tavern, and the relationship between the occupants and the vehicle is much closer than that of the visitor to the tavern. See *supra*, at 9. Because automobiles are different for the purpose of the Fourth Amendment, *Ybarra* does not apply, see *supra*, at 9, depriving the notice test of its constitutional authority.

The notice test is also impractical to apply to automobile searches. Requiring an officer searching a vehicle to determine who owns what container is an unnecessarily difficult decision to make, thus risking a potential windfall for perpetrators. The problem with tying authority to search a container to the identity of the owner was explained by the Pennsylvania Supreme Court:

> "[I]t would be ineffective and unworkable to require police officers to make the distinction between which articles of clothing and personal property belong to the resident and which belong to the visitor before beginning the search. It would not be reasonable to require police officers executing a warrant to ask individuals located on the premises whether they own various items of personal property nor would it be reasonable to expect an appropriate response were they required to do so.[5]

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5. The facts of the present case illustrate this point. Defendant falsely denied having ID, when her ID was, in fact, in the purse now in question. See *supra*, at 2.

> "[V]isitors to the premises could frustrate the efforts of police by placing contraband among their unworn personal effects or by announcing ownership of various articles of clothing and containers in order to place those items beyond the scope of the warrant. We cannot sanction any rule that through fraud and gamesmanship erects barriers to the effective and legitimate execution of search warrants." *Commonwealth* v. *Reese*, 549 A. 2d 909, 911 (Pa. 1998).

The fact that the ownership of the container in the present case may be relatively easy to determine does not justify a rule capable of so much harm. The fact that the state did not dispute defendant's ownership of the contents of the purse in the present case, see *Houghton*, *supra*, 956 P. 2d, at 370-371, does not mean that a male suspect will never hide contraband in a woman's purse. The notice test tries to deal with this by allowing a container known or reasonably suspected of belonging to a visitor to be opened if there was "the opportunity to conceal the contraband within the personal effects of the visitor immediately prior to the execution of the warrant." *Id.*, at 370. This will not be practical for automobile searches. Anytime the officer could not see an appreciable part of the passenger compartment for some time between the stop and the search, there will be an opportunity to hide contraband in a purse or some similar container. Since the vast majority of vehicle searches are likely to satisfy this condition, the notice test may be easily avoided. Requirements that add little to personal privacy do not warrant Fourth Amendment protection. See *Acevedo*, *supra*, 500 U. S., at 576. The Wyoming Supreme Court's test would only further complicate the rule at the risk of greatly aiding the concealment of contraband. While such complexity may be acceptable during the relatively formal and set-piece execution of a search warrant, the much more fluid *Carroll* search requires a more straightforward rule.

The proper rule is derived from *Acevedo*. This Court stated that: "The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." *Id.*, at 580. It is no more than a

small step to recognize that such probable cause supports searches into any container within the automobile that could contain the contraband. The diminished sense of privacy associated with the automobile, see *supra*, at 5, the relationship between the occupants of a vehicle, see *supra*, at 7-8, and the relative ease of concealment during an automotive stop provide strong support for this Court to take that step. The simplicity of this rule and its obvious ease of administration satisfies the needs of automotive searches, making a compelling case for this rule.

Acevedo drew its rule from *Ross*. See 500 U. S., at 580. When the *Ross* Court tied the authority to search containers to probable cause, it was only concerned with whether the container could reasonably be suspected of holding the contraband. See *supra*, at 10-11. There is no inconsistency between the spirit of *Ross* and a rule rendering ownership irrelevant. *Acevedo* meant to provide officers conducting automobile searches with "one clear-cut rule . . . ." 500 U. S., at 579. Rejecting any ownership-based limits to *Acevedo* preserves its integrity.

CONCLUSION

The decision of the Wyoming Supreme Court should be reversed.

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Respectfully submitted,

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